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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 10/041,836
Filing Date: January 07, 2002
Appellant(s): TOWNSEND, MARSHALL O.

Lawrence D. Graham
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/14/03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 9 and 21-22 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

1,484,390	Gibbs	02-1924
2,707,638	Manley	05-1955
2,652,251	Molinar	09-1953
5,273,285	Long	12-1993
5,415,407	Beatty	05-1995
6,156,396	Florian	12-2000

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

The following ground(s) of rejection are applicable to the appealed claims. For the reasons given below, it is believed that the rejections should be sustained.

In order to determine whether application claims must be found unpatentable over the prior art, the terms and phrase used in the claims must read be read in light of the specification. This is necessary to establish whether the meaning of those terms and phrases given by the applicant in the context of the application should be accorded any meaning different from the usual and customary meaning of the claim terms. The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellants' specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997). See also *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Here, it is submitted that when read in light of the

specification the claim term, such as "link", must be given their ordinary and common intrinsic dictionary definition. The Webster unabridged dictionary defines "link" as: "to form a connection or association". Accordingly, it is submitted that the claims may be read on the prior art in the following manner.

Claim 1, 11-13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs et al. (US Patent No. 1,484,390) in view of Manley (US Patent No. 2,707,638).

Gibbs et al. discloses an instruction chart for playing golf comprising:

- A template (Fig. 2), the template having a top and a bottom; and, a graphic design attached to the template, the graphic design depicting a swing reference guide comprising a plurality of shot selection types (here a "brassie" shot, Figure 1 for a drive, Figure 3 for a "mid-iron" etc); a link between each one of the plurality of shot selection types and one of the club path indicators (11, all the instructions that are shown on the template could be considered as links); and a foot (for example 2 & 3) and ball position indicator (7).

Gibbs et al. fail to teach a plurality of club path indicator on a single template and a tee bore extending though the template wherein the tee bore is being configured to receive a golf tee or a golf ball and a generally longitudinal tee slot extending from the tee bore. Manley teaches a plurality of club path indicators (14-21) on a single template (each for the various shots) and a tee bore extending though the template wherein the tee bore is being configured to receive a golf tee or a golf ball (23,24 and refer to Fig.2) and has a generally longitudinal tee slot extending from the tee bore (24). With respect to the

plurality of club paths, It would have been obvious to one of ordinary skill in the art at the time the invention is made to provide a plurality of club paths as taught by Manley in the Gibbs et al. device in order to have a single device that can teach all of the various different swing paths for a golfer instead of having plural mats, one for each shot type. And with respect to the tee slot, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a longitudinal tee slot as taught by Manley in the Gibbs et al. device in order to provide clearance for the putter as stated in column 3, lines 10-16.

Claims 4-6, 10, and 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 1 and 20 above, and further in view of Molinar (US Patent No. 2,652,251).

The references as applied to claims 1 and 20 above fail to explicitly teach inside out, outside-in club paths, a club face angle indicator associated with the shot selection types and a handle. Molinar discloses an inside-out, outside-in club paths (Fig. 1), a club face angle indicator (15 and 16) associated with the shot selection types and a handle (the cavity between the arched section and the vertical section shown in Fig. 1 can be considered a handle) .It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide different types of club paths and club face angle indicitors associated with the shot selection types as taught by Molinar in the Gibbs et al.'s device in order to combine a maximum instructional guidance in to a single training unit which is portable. With respect to claims 25-31 each of these reference shows a plurality of indicia useful in conveying instructive information, and

given that, it would appear obvious to present that useful indicia in any form desired such as by way of an insignia or color of any design, such being mere matters of design, since each is capable of adequately conveying the same information.

Claim 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 1 and 20 above, and further in view of Beatty (US Patent No. 5,415,407) and Long (US Patent No. 5,273,285).

The references as applied to claims 1 and 20 above fail to include an ultraviolet protective layer. However, Gibbs et al. also disclose that the device could be any suitable material. And both Beatty (refer to claim 6) and Long (refer to column 3, lines 65-68) disclose an ultraviolet protective layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an ultraviolet protective layer as taught by both Beatty and Long in the Gibbs et al. device in order to prolong the life of the device by protecting it from sun damage.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims 1 and 20 above, and further in view of Florian (US Patent No. 6,156,396).

The above references disclose the invention as recited above but fail to include that the graphic design is laminated, that the graphic design is attached to a bottom surface of the template.

With respect to the device being laminated, Florian discloses that the device is laminated (column 2, lines 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to laminate the device in order to provide an anti-friction layer that is durable.

With respect to the graphic design being attached to a bottom surface of the template, it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the graphic design anywhere including on top surface or bottom surface. If the device is clear plastic it will not matter where the design is located because the design can be seen through regardless of its location, and it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

(11) Response to Argument

Appellant argues that Gibbs (US Patent No. 1,484,390) does not have a plurality of shot selection types on a single template, including a "link between each one of the plurality shot selection types and one of the club path indicators," as recited in claim 1. However, it should be noted that Gibbs discloses a plurality of templates (for example 30,39,48) with different positions of the feet (for example, 31-32,40-41,49-50), with different positions of the hand (for example, 33,42,51), with different path of travel (36,45,54), and different types of instructions (38,47,56) to go with each template. And Manley (US Patent No. 2,707,638) discloses a plurality of club path indicators (14-21) on a single template. Thus, It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of club paths as taught by Manley in the

Gibbs device in order to provide a single device that can teach different swing paths for a golfer. If one combines the features of Gibbs with those of Manley, it is obvious that the instructions of Gibbs (38, 47, 56) would have to be modified to include how to properly select and use the different club paths . And these instuctions could be called links because the modified templet would have a plurality of shot selection types and club path indicators .

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gibbs discloses a plurality of templates (for example 30,39,48) with different positions of the feet (for example, 31-32,40-41,49-50), with different positions of the hand (for example, 33,42,51), with different path of travel (36,45,54), and different types of instructions (38,47,56) to go with each template. And Manley (US Patent No. 2,707,638) discloses a plurality of club path indicators (14-21) on a single template. Thus, It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of club paths as taught by Manley in the Gibbs device in order to provide a single device that can teach different swing paths for a golfer.

Appellat argues that Molinar refers to a stance indicator not a club face indicator. However, items 15 and 16 of the Moliner reference do bothe relate to the angle any given club face will make whtih respect to desired flight club is aimed. Each in some way relates the anglr of the club face to the flight path.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

June 9, 2003

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